

BUDGET & FINANCE COMMITTEE
of the
SUFFOLK COUNTY LEGISLATURE

Minutes

A regular meeting of the Budget & Finance Committee of the Suffolk County Legislature was held in the Rose Y. Caracappa Legislative Auditorium of the William H. Rogers Legislature Building, 725 Veterans Memorial Highway, Smithtown, New York on Thursday, **December 16, 2004**.

MEMBERS PRESENT:

Leg. Allan Binder, Chairman
Leg. William J. Lindsay, Vice•Chairman
Leg. Daniel P. Losquadro
Leg. Lynne C. Nowick
Leg. David Bishop
Leg. John M. Kennedy, Jr.

ALSO IN ATTENDANCE:

Mea Knapp, Counsel to the Legislature
Ilona Julius, Deputy Clerk
Jim Spero, Director of Budget Review
Gail Vizzini, Deputy Director of BR
Ellen Martin, Aide to Leg. Binder
Ben Zwirn, Assistant Deputy County Executive
Ken Knappe, Budget Office, County Executive
Paul Perillie, Aide to Leg. Foley
Ed Hogan, Aide to Leg. Nowick
Lynne Bizzarro, Chief Deputy County Attorney
Bob Bortzfeld, Budget Office, County Executive
DeWitt S. Davies, Chief Environment Analyst

MINUTES TAKEN BY:

Diana Kraus, Court Stenographer

(THE MEETING CONVENED AT 1:11 PM)

CHAIRMAN BINDER:

Please rise for the Pledge of Allegiance led by Legislator Nowick.

(SALUTATION)

CHAIRMAN BINDER:

Okay. We are all here. The Budget and Finance Committee will come to order.

LEG. LINDSAY:

Motion to adjourn.

CHAIRMAN BINDER:

No, we will not adjourn, Legislator Lindsay. I know you want to go, but there are things we must do. We are charged with the People's business.

Okay. Do I have any cards? No cards. Does anyone want to speak besides me? No. Okay. Stenographer doesn't want to speak. Okay.

Do not do that. That's not a debatable motion. So, I didn't recognize •• I didn't even hear the motion to adjourn, Legislator Nowick. Okay. Then we will go right to the agenda. This is the •
• I guess it's the last legislative Budget and Finance Committee of the year. So, this is out last meeting. Does it make you feel good or bad? You want to think about it? You want to talk about this year, Legislator Losquadro? While you do, we're going to go on.

2219 (adopting local law, a Charter law to provide for fair and equitable distribution of public safety sales and compensating use tax revenues.)

MS. JULIUS:

Public Hearing.

CHAIRMAN BINDER:

Is this a public hearing? Where is it?

MS. JULIUS:

2219.

CHAIRMAN BINDER:

I was just calling. That's what I said, 2219. So ••

MS. JULIUS:

The affidavits were filed.

CHAIRMAN BINDER:

Thank you very much.

MS. JULIUS:

In proper order.

CHAIRMAN BINDER:

Affidavits duly filed. I don't have the timer here so I'll just kind of •• you're going to take care of that? Okay. Legislator Losquadro is our timer. And you've got •• just speak.

MR. ZWIRN:

No, I won't even take three minutes. But we do have some questions about the •• about the bill, what the fiscal impact is going to be. I think that Legislator Caracciolo filed a corrected copy on this as well. There is a Public Safety Task Force that's in effect right now. And one of the issues that is before the Committee is to discuss the east end and the police services that they get; are they getting their fair share for the tax dollars that they pay into the system. And I was speaking with Legislator O'Leary. And I think he might be of the same •• you know, just to let this •• you know, I know it's just public hearing and that it will come up for a vote later today •• to table this at some point so we can •• until the Public Safety Committee has an opportunity to finish its work, which looks at the east end and police services to see if there's a need to change the formula and how the sales tax revenue is sent to the east end for police

services.

CHAIRMAN BINDER:

Question on that. My understanding is that this changes numbers across the board. I think it's •• we're not talking about a lot of money. We're talking, I think, three hundred something thousand dollars. But •• overall. But that includes villages having increases also. So, I'm not sure that the Public Safety Committee is also looking at police services that are outside the district but in the west end.

MR. ZWIRN:

Yes, they are.

CHAIRMAN BINDER:

Oh, they are looking at those also?

MR. ZWIRN:

As well. We are looking at villages as well.

CHAIRMAN BINDER:

Okay. Legislators Lindsay.

LEG. LINDSAY:

I apologize that I don't have my book with the exact legislation; but from my understanding this increases the formula on the revenue sharing that we go through every year? Can anybody answer?

CHAIRMAN BINDER:

Well, my understanding is that it changes the •• and we can have Budget Review talk about it. It changes the formula. And in changing the formula, it actually increases expenditures because •• because of population. So, it's an expenditure increase in the east end and in the villages. So, everyone gets more, but ••

MR. ZWIRN:

And it would change ••

LEG. LINDSAY:

Reading the legislation, I don't think all the villages are included. I didn't see like Amityville there.

CHAIRMAN BINDER:

Yes, Amityville also gets an increase. My understanding is so ••

MR. ZWIRN:

No, there are •• the villages would be affected as well; but it would be •• the police taxes if the County •• the west end would be paying that are not in the incorporated villages, who don't have their own police departments, or the east end, which has their own police departments. The balance of the taxpayers would pick up •• whatever money is going out will have to be made up by the other taxpayers.

LEG. LINDSAY:

Absolutely. But it increases, then, across the board the revenue sharing ••

MR. ZWIRN:

That's correct.

LEG. LINDSAY:

•• with the individual villages and towns that have a separate police district.

MR. ZWIRN:

It changes the formula, but they'll get an increase.

CHAIRMAN BINDER:

I think all the villages ••

LEG. LINDSAY:

But everything goes up. Nothing goes down.

CHAIRMAN BINDER:

Right. I think Budget Review actually has an analysis done by •• well, Legislator Caracciolo

started reading me numbers. So, he had to get them from somewhere. And I got to figure he didn't do it on his own. And I'm getting a nice smile from Budget Review.

MS. VIZZINI:

Generally speaking, you are correct. The resolution seeks to do two things. One is to solidify the methodology by which the town and village police districts receive the revenue sharing and with an eye towards increasing the amounts commensurate with the general increases in the sales tax. We are working with the sponsor and counsel to solidify the methodology. And we did work out one or two scenarios for Legislator Caracciolo. And we're waiting for him to respond.

CHAIRMAN BINDER:

When you say one or two scenarios, I had spoken to him quickly on the way here, in fact, to see if he had any numbers. And he read me a list of numbers. He knew villages in Huntington, some villages in Babylon. And I didn't •• I •• then I pulled up here. And I couldn't get anymore from him. I wanted him to come in, but he has a number of things. He had also the east end. He knew their numbers so •• when you say scenarios, the numbers he was reading me was based on a scenario. There could be a different scenario. I'm not sure what •• where you're coming from.

MS. VIZZINI:

We are trying to pin down a methodology to base this on. There is a current rule of thumb that we use; we do it in the Operating Budget. What we gave him was a comparison between using the 2005 adopted figures versus previous figures. And if we use the 2005 adopted figures, they were not as favorable as other methodologies. So, I don't think we're at the point where we have clarified the methodology for calculating the final amounts.

CHAIRMAN BINDER:

So, the bottom line is you don't know if you can cost this out yet. I mean, we know how it's going to happen. So, when we say the methodology, you're talking the methodology for costing it out. So, we understand its budget impact. But we do know the methodology that •• that the legislation has for re•distribution.

LEG. LOSQUADRO:

Mr. Chairman?

CHAIRMAN BINDER:

Is that •• yes. I'll get to you. Do you have that? You have •• in other words, with the budget •• the bill says what it says. It says •• it has a particular formula in how it's going to work. Are you telling me that you budgetarily can't tell us the impact because of •• there are different methodologies to figure it under this legislation?

MS. VIZZINI:

Well, the amended copy uses a base of an audited amount, which would be an actual •• you know, like the only actual we have now is 2003 actual.

CHAIRMAN BINDER:

Three, right.

MS. VIZZINI:

Which was our first discussion with the sponsor that •• and Counsel •• that we clarify the base year. So, that's the scenario we provided him with. I'm not sure if this meets all his expectations.

CHAIRMAN BINDER:

Okay. Let me •• Legislator Losquadro and then Legislator Lindsay.

LEG. LOSQUADRO:

Just on that same point, as I was reading this, and also based on Counsel's memorandum, it would seem that the formula is •• the formula to be used would be determined by population, the percentage. So, is there •• I don't understand what the question would be. If this is adopted, does the resolution not spell that out specifically that population would be the formula that would be used? Is there some other mechanism through which a different formula could be derived?

MS. VIZZINI:

It will definitely be based on population. It is •• as the resolution states, it's the most recent year for which the audit amount is available. So, if we had done it, it would have been based on the 2003 actual amount of 1/8 of 1% of the public safety sales tax times the population.

Another factor is what portion of the sales tax we give to the police district itself. And we were in conversation with the Budget Office. Budget Review has some suggestions to make to the sponsor. And I believe the Budget Office may have some comments.

LEG. LOSQUADRO:

Okay. So, the formula would be based on population. But what percentage it would be multiplied by that percentage of population of those villages what is still in question and is not necessarily qualified by the language in this bill; is that what you're saying?

1/8th of 1% that you were saying.

MS. VIZZINI:

The base?

LEG. LOSQUADRO:

Yes.

MS. VIZZINI:

The way the base is defined in the resolution, it would be the last audited amount, which was 1/8th of 1% of the sales tax for public safety.

LEG. LOSQUADRO:

Okay. So, that is included in the resolution? That's what I was trying to get at.

MS. VIZZINI:

That is included in the resolution, yes.

LEG. LOSQUADRO:

Okay. Thank you.

CHAIRMAN BINDER:

Legislator Lindsay.

LEG. LINDSAY:

The 1/8th of 1% is a bench mark that we've used in the past in distributing this money anyway;

right? That doesn't •• hasn't changed from the practice; am I correct?

MS. VIZZINI:

The Budget Office points out that that is part of the problem in that the current allocation of the monies is not tied into the fluctuation of the sales tax.

LEG. LINDSAY:

Okay. See, I have a bigger problem with the whole thing. And from what I understand, they're •• it's going up based on population. So, some are going to benefit, some might lose. But more importantly than that, it codifies the whole process, which it never was before. This was always part of the operating budget talks. And, I mean, I remember years here in real dire straits there was talk about decreasing the amount that we put into revenue sharing or eliminating revenue sharing. I don't think we've ever done that; but we talked about it. And, you know, you could wind up with a scenario here where •• where we're forced to raise taxes to satisfy this formula for revenue sharing. And I have a problem with that.

CHAIRMAN BINDER:

You have a problem with raising taxes, Mr. Lindsay.

LEG. LINDSAY:

Yes.

CHAIRMAN BINDER:

Yes. I want to make sure the stenographer has that.

LEG. LINDSAY:

Underline it in bold.

CHAIRMAN BINDER:

Bold and italics. And an exclamation point wouldn't be a bad thing. Read his lips. Read Mr. Lindsay's lips. No new taxes. Any other comments? Are there any other comments from the public that I didn't ask for? No one's here. I'm going to take a motion to close the hearing. Is there a second?

LEG. LINDSAY:

You want to close or recess it simply because we don't have •• the formula isn't finished yet, is it?

CHAIRMAN BINDER:

On the motion.

LEG. LINDSAY:

Isn't the resolution still ••

CHAIRMAN BINDER:

In the formulation.

LEG. LINDSAY:

Yeah.

CHAIRMAN BINDER:

It didn't seem so from the sponsor, but I'm getting that distinct impression here by Budget Review who is working with him that we're not at any •• we're not at an end point yet. I'm getting that impression.

MS. VIZZINI:

Yeah. We would like to share some additional comments with the sponsor. Whether you want to close the public hearing and address this ••

CHAIRMAN BINDER:

Well, if he has to make major changes, then, we got to reopen the public hearing because if there are major changes in the bill in some way, then, the comments would be •• they would need new comments. So, okay. I'll make a motion to recess to the next meeting, whenever that may be.

LEG. LOSQUADRO:

The general meeting?

CHAIRMAN BINDER:

No, no, no. Next meeting of the Budget and Finance Committee, whatever •• or whatever successor committee thereto might happen. But, whatever Committee takes jurisdiction. We'll see how that works after the beginning of the year. But at the next Committee meeting of Budget and Finance, that is the time it will be recessed to. Second by Legislator Lindsay. All those in favor? Opposed? **2219 is recessed. (Vote: 5•0•0•1. Leg. Kennedy not present)**

1929, amending the 2004 Operating Budget transferring funds for the Northport American Legion Post 694 Corporation.

LEG. LOSQUADRO:

Motion to table.

CHAIRMAN BINDER:

Motion to table by Legislator Losquadro, second by Legislator Bishop. All those in favor? Opposed? **Tabled. (Vote: 5•0•0•1. Leg. Kennedy not present)**

1978, directing the County Treasurer and County Comptroller to provide for the equitable distribution of auction proceeds. Ms. Bizzarro wanted to speak on that.

MS. BIZZARRO:

Good afternoon. I've spoken on this bill before. I just wanted to reiterate the two main legal problems with the bill. There's no statutory mechanism for the County to set up the reserve fund contemplated in this bill. Basically that's Article Six of the General Municipal Law which sets up what types of reserve funds are permitted.

In addition, the bill is in contravention of the County's budgetary statutes and process. And the Court of Appeals has opined on this exact issue in _Corn v. Gallata_. Basically, the whole purpose is to prevent a larger than necessary tax levy. And by taking the 5.1 approximate million dollars out of the budget for the 2004•2005 year, you will be forced to go the taxpayers to makeup up the short fall. And the County's budget process was designed to prevent exactly that problem. If you have any questions ••

CHAIRMAN BINDER:

Legislator Lindsay.

LEG. LINDSAY:

This is •• this is a companion resolution to Legislator Montano's resolution about giving back the money to the people. That was only for owner•occupied houses. I can't believe that •• we raised \$5 million on this auction. It wasn't all owner•occupied, right?

MS. BIZZARRO:

But this bill contemplates holding back all of those monies.

LEG. LINDSAY:

Oh, everything?

MR. ZWIRN:

Everything. And it segregates that money so it can't be used for anything else in the General Fund. If those individuals are entitled to that money back based on Legislator Montano's bill, that money can be repaid out of the General Fund. You don't need to segregate this money to do it. But what this does, this takes this money out of play. You have a \$5 million hole in your General Fund budget. And that was one of reasons we brought this up last time. And I think it was tabled.

LEG. LOSQUADRO:

Motion to table.

CHAIRMAN BINDER:

I think the County Executive said he's paying you enough to cover it so ••

MR. ZWIRN:

Well, I offered but he said I didn't have to do it this year. Next year.

CHAIRMAN BINDER:

Okay. We have a motion to ••

LEG. BISHOP:

I have a question.

CHAIRMAN BINDER:

•• table by Legislator Losquadro, second Legislator Nowick. Legislator Bishop.

LEG. BISHOP:

And just, Mr. Zwirn or Ms. Bizzarro can answer the following. Legislator Montano apparently believes that we need to set aside money; is that what this is? He wants to set aside money and block box it, so to speak, for this purpose.

MR. ZWIRN:

That seems to be •• I think that •• I don't know exactly, but it would seem to seem that way.

MS. BIZZARRO:

I don't know what his intention is.

LEG. BISHOP:

Well, I'm telling you what his •• would you take my word for it that that's his intention, is to make sure that there's money to pay the •• pay back the equities in these homes that we take, that's clearly the intention.

MR. ZWIRN:

Right.

LEG. BISHOP:

And he says the way to do that is to create a separate fund. Is that the mechanism that he's creating with this resolution?

MR. ZWIRN:

He's freezing these funds and segregating them; freezing them so they could be used for no other purpose, but there is no mechanism to get them back ••

MS. BIZZARRO:

You can't get there the way he's trying to do it.

LEG. BISHOP:

But let me ask you conversely, all right, so we kill this bill that you're urging. And now next year comes and we're •• we have to pay the equity back in these homes. Where is that money going to come from?

MR. ZWIRN:

Or you could do it under •• it would be part of ••

LEG. BISHOP:

Are we already budgeted for it?

MR. ZWIRN:

No, but it would be part of a lawsuit and •• probably. At some point they'd bring a suit against the county if they were entitled under the law. You can bond the money.

CHAIRMAN BINDER:

It's big enough, you'll bond a judgement.

MR. ZWIRN:

You could bond it. You could bond the money.

MS. BIZZARRO:

The money would come in from the sale. So, the money would be coming in at that time.

LEG. BISHOP:

But •• okay. So, it comes from in from the ••

MS. BIZZARRO:

And it would go into the General Fund.

LEG. BISHOP:

Okay. So they get it back when we sell the property.

MS. BIZZARRO:

Right. Exactly.

LEG. BISHOP:

So, we don't need to set aside money now because the money ••

MS. BIZZARRO:

Especially setting aside such a large portion of the money. It's not even a portion of it. It's all of it.

MR. ZWIRN:

Legislator Lindsay is right. The people that do qualify under Legislator Montano's bill are going to be a lot smaller if anybody under that •• under the \$5 million. So, I don't know how much sense it would make to freeze all that money.

CHAIRMAN BINDER:

Legislator Lindsay.

LEG. LINDSAY:

I was •• and I don't have the numbers at my finger tips, but as I recall, there was only about five owner•operated houses in the last auction. And I mean, if anything, those people are entitled to the difference between point A and point B; not the whole •• the whole amount anyway.

MS. BIZZARRO:

Right.

LEG. LINDSAY:

So, we're probably at best talking about a couple of hundred thousand dollars.

MS. BIZZARRO:

Yeah, it's small.

MR. ZWIRN:

I think that would be the high side, yes.

LEG. LINDSAY:

And we would be freezing five million. I mean, I think if he really wants the resolution considered, he should change the resolution to isolate it to that group of people.

CHAIRMAN BINDER:

Okay. We have a motion and a second to table. All those in favor? Opposed? **1978 is tabled. (Vote: 6•0)**

MS. BIZZARRO:

Thank you.

CHAIRMAN BINDER:

All those bills that are tabled, by the way, will be tabled for the next meeting, which again the same way as the Committee will be constituted next year.

IR's. 2177, to readjust, compromise and grant refunds and chargebacks on correction or errors/County Treasurer by County Legislature # 200.

Motion by Legislator Bishop, seconded by Legislator Nowick. All those in favor? Opposed? **2177 is approved. (Vote: 6•0)**

2193, (to readjust, compromise and grant refunds and chargebacks on correction or errors/County Treasurer by County Legislature #201.) Same motion, same second, same vote. (Approved. Vote: 6•0)

2194, (to readjust, compromise and grant refunds and chargebacks on correction or errors/County Treasurer by County Legislature #202.) Same motion, same second, same vote. (Approved. Vote: 6•0)

2195, (to readjust, compromise and grant refunds and chargebacks on correction or errors/County Treasurer by County Legislature #203.), same motion, same second, same vote. (Approved. Vote: 6•0)

2214, amending, amending the 2004 Operating Budget and transferring funds in connection with the County share for the reconstruction of CR 16, Portion/Holbrook

Road, Brookhaven. Motion by Legislator Lindsay, second by Legislator Losquadro. Any discussion on this? If not, all those in favor? Opposed? **2214 is approved. (Vote: 6•0)**

2219, (adopting local law, a Charter Law to provide for fair and equitable distribution of public safety sales and compensating use tax revenues.) Motion to table myself, second by Legislator Lindsay. All those in favor? Opposed? Right, so I'm tabling it. No, no, no. The hearing is recessed. I'm tabling the bill. A motion and a second. All those in favor? Opposed? **2219 is tabled because the hearing is recessed. (Vote: 6•0)**

2226, amending the adopted 2004 Operating Budget to transfer funds from Fund 477 Water Quality Protection, amending the 2004 Capital Budget and Program and appropriating funds in connection with the Aquaculture Leasing Program.

LEG. LINDSAY:

Motion.

LEG. LOSQUADRO:

Second.

CHAIRMAN BINDER:

Motion by Legislator Lindsay, second by Legislator Losquadro. Let me get from Counsel, if I could, a little background on this for the Committee.

MS. KNAPP:

You could start with the end of my note that said that I didn't get any backup. Now, whether or not Budget Review has it, I'm not sure. But just from the face of the resolution, it amends the operating budget and transfers funds out of 477 and appropriates \$600,000 in connection with the Aquaculture Leasing Program.

CHAIRMAN BINDER:

Right. Okay. So, why don't we have him give us an explanation of what we're doing.

MR. DAVIES:

Good afternoon. My name is DeWitt Davies. And I'm the Chief Environmental Analyst for the

Department of Planning and I've prepared the handout that you have before you today. I would be happy to answer any questions on the nature of this program. In essence, this is an item that has been under discussion for several years here in the County. There has been some rather dramatic movement in the last year due to the passage of a new state law, chapter 425 of the laws of 2004, which in essence repeals an old leasing law that has been on the books for over 35 years.

This more or less changed the ground rules within which the County must operate if it wants to pursue this program. And the new legislation essentially gives the County the right to lease underwater lands in Peconic and Gardiner's Bays for the purpose of shellfish cultivation. It also seeds about 100,000 acres of property to the County if, in fact, it fulfills the mandate as listed under this law.

So, a year or so ago there was a capital budget item proposed and adopted that addressed only a portion of the required program in accordance with the guidance in the old law which was repealed. With the passage of the new law, things have changed quite a bit. And require additional work to determine where and how the County would issue shellfish cultivation leases in this area.

The most important thing in this program is the requirement that the County must actually execute leases if it wishes to secure the authority as envisioned under this law. And if it doesn't, by the year 2010, that authority will vanish and the County will forfeit title to the 100,000 acres in this area.

CHAIRMAN BINDER:

Are we looking to •• we had passed legislation to talk about the seeding of oysters out in the east end. Is this where we want to do it? Is this the area? Was this scallops? Oysters?

MR. DAVIES:

Scallops.

CHAIRMAN BINDER:

Oh, scallops. I thought we were doing pearls here. Okay. Looking to raise some money for the County. That was scallops.

MR. DAVIES:

That was a •• in essence a fishery restoration program. Aquaculture leasing would occur on leases. It would be private activity conducted under arrangement with the County in accord with state law, DEC regulations, etcetera. And that would be for, again, private shellfish farming in these designated locations.

CHAIRMAN BINDER:

Okay. So, it's not for a program that we've already done under 477.

MR. DAVIES:

No, it's not. No.

CHAIRMAN BINDER:

This is for •• now, how much have we done over the years in terms of •• or how much has it brought to the County? Give me an idea of what •• what having these leases have done for the County.

MR. DAVIES:

The County has never leased any property in this area. From the period from about 1884 to about 1915, the County was empowered to issued grants of land to oyster growers.

CHAIRMAN BINDER:

But it's no longer ours? We don't have title anymore, but we're allowed to lease it from the state?

MR. DAVIES:

We're allowed to lease if we meet the requirements under the law. But there have been no leases, no.

CHAIRMAN BINDER:

One of the reasons you put in italics that the County "shall terminate and the County will forfeit any title to the underwater lands." Well, we don't have title to lands anyway. You're talking

about we might forfeit a leasehold. But we wouldn't •• I mean there's no title. Obviously you're telling me we don't have title anyway. It's a question of whether we would •• we would take a leasehold on this.

MR. DAVIES:

If we implement this program, the County could lease in this area. In other words, the State of New York would give the power to Suffolk County, and in essence for this area, it would hold title to that property for the purposes of shellfish cultivation only. Underlying full title will reside with the State of New York. But in essence if you decide where and how shellfish leasing would occur, you would assume a significant control over future activities in this area.

CHAIRMAN BINDER:

Are we paying for these leases? We're not paying.

MR. DAVIES:

No.

CHAIRMAN BINDER:

We just have to say we want to ••

MR. DAVIES:

That would be •• no. No, we're not paying anything to the State of New York, no. And if a private individual would want to lease this property under regulations which would remain to be developed at this point, there would be some formal agreement with the farmer. And there would be a certain fee established at that point. There is no ••

CHAIRMAN BINDER:

And the fee would be paid to us as a sub •• sub•lease to us.

MR. DAVIES:

The County. Between the individual and the County. There would be a lease between the individual and the County and it would be paid to the County.

CHAIRMAN BINDER:

Do we have •• have people been knocking on our door to do this? They're looking for us to do

this? Or are they out there now doing it themselves and thinking so now I'm going to have pay someone for something I'm doing as a regular business now.

MR. DAVIES:

There are approximately 20 to 30 temporary marina assignments issued by the State of New York on this bottom. If a leasing program is established, those people would have to get leases from the County. We've heard from the east end marine farmers that there is a significant interest in pursuing this program. We have a number of individuals that would like to secure the ability to obtain a lease because it gives them certainty with respect to how they can continue or start their activities.

CHAIRMAN BINDER:

But there are currently people there now doing this activity ••

MR. DAVIES:

That's correct.

CHAIRMAN BINDER:

This farming. And they have a lease with New York state.

MR. DAVIES:

No.

CHAIRMAN BINDER:

They don't have a lease.

MR. DAVIES:

They have a permission. It's temporary. It has to be renewed each year. There is some oyster cultivation activity underway on grant land which is owned by the individuals as long as they pay their taxes on that property. So, there are no leases. The temporary assignment program was envisioned as an interim step until and when the County ever came up with an adopted leasing program.

CHAIRMAN BINDER:

So right now they pay nothing. But it's obviously can be pulled •• as permission can be pulled at any time.

MR. DAVIES:

That's correct.

CHAIRMAN BINDER:

They're now interested in paying for the stability of knowing.

MR. DAVIES:

That's correct.

CHAIRMAN BINDER:

That's what you're saying. The other question is there have been questions of lawsuits in terms of underwater holdings or leaseholds or •• around the County. Are we currently in lawsuits? Do we know if there's any litigation having to do •• I'm trying to remember. Maybe members of the Committee remember. We were involved with lawsuits having to do with underwater •• either our ownership of property or leaseholds.

MR. DAVIES:

A number of years ago, there was a case involving underwater grant lands. And much of the property involved was returned to the County as a result of some of those cases and non •payment of taxes. Last year there was a request to redeem some of those properties by an individual and that also has been completed. So, the current status of any outstanding legal actions, I'm not aware of anything. I just don't know.

CHAIRMAN BINDER:

So, it was only on the grant •• on the grant land; not on this land.

MR. DAVIES:

That's correct.

CHAIRMAN BINDER:

And that's not a part of this.

MR. DAVIES:

No.

CHAIRMAN BINDER:

Okay. Are there any other questions by committee members?

LEG. KENNEDY:

Mr. Chair.

CHAIRMAN BINDER:

Legislator Kennedy.

LEG. KENNEDY:

Thank you. Hi, DeWitt. How are you?

MR. DAVIES:

Hi, John.

LEG. KENNEDY:

If there are 20 to 30 aquaculture farmers working this •• oyster men or whatever it is, do they take up the full 100 thousand or is it just piecemeal. They cover the full 100 thousand acres?

MR. DAVIES:

It's about 110,000 roughly. No, they don't. They are issued circular areas about five•ish •• five acres in size on underwater lands. But, again, it's not a permanent arrangement whatsoever. And that bothers the people who are in that program. Again, it was temporary kind of thing. And, so, they have •• a couple of hundred acres involved in that program. Should the County establish its own leasing program, that program would end. And they would have to get leases under the county program to proceed.

LEG. KENNEDY:

You talk about having a promulgate rules and regs. There's rules and regs that are in place now, though, that have been eliminated as a result of this state.

MR. DAVIES:

There are no rules and regulations in place governing a leasing program. They would have to be established and adopted by the Legislature along with the maps that would identify where shellfish cultivation loans would be located. All of that would have to be done by official establishment of local law. The rules and regulations governing the conduct of aquaculture activities in Peconic and Gardiners Bays now are administered by the New York State DEC. And it is envisioned that that would continue in terms of how they regulate the actual culture process.

LEG. KENNEDY:

So •• and the take, the farming •• and other words, the volume, the hours of operation, marking, safety, all that kind of stuff, that would still sit with that level of regulation?

MR. DAVIES:

With the Corp of Engineers, the Coast Guard and the state; that's correct.

LEG. KENNEDY:

So all we would be promulgating, then, is just the administration of the actual leases? Letting, duration, tracking, things like that?

MR. DAVIES:

And location; that's correct.

LEG. KENNEDY:

Is there any mapping in place now? I'm familiar with the oyster lot maps that are out in Peconic and some of those areas. Are there any mapping that's in place now? I mean, we have maps out in the Clerk's office that went back to, you know, the 1700's.

MR. DAVIES:

Those properties would be identified and mapped as part of an effort to define where these zones would be located. However, there are lots of other types of information that would have to be acquired under this program in order to define where these zones would be best located. You could think of where existing fisheries are located, fin fisheries, shellfisheries, eel grass beds. There are certain requirements in the law that would place those areas off limits, for

example, 1,000 feet from main high water line. You wouldn't want to lease an area where there are cables, where there are high currents, where there are navigation channels. So, all of those things would have to be defined.

LEG. KENNEDY:

Who does enforcement and patrol and things like that in this area now?

MR. DAVIES:

This new law ••

LEG. KENNEDY:

No, I'm sorry. Actually what I would say is •• you know, in other words, you know, the •• when there are operators there that are operating now, they're harvesting, does DEC marine patrol do, you know, periodic patrol? Would we have to take on any patrol requirements?

MR. DAVIES:

This law amended the environmental conservation law. And what that means is that the ECO's, Environmental Conservation Offices, would have a primary role in enforcing their law. So, in essence, they would be involved in this in a primary way.

LEG. KENNEDY:

So we would administer the leases, but DEC would continue to do monitoring and enforcement?

MR. DAVIES:

That's correct.

LEG. KENNEDY:

One last question. This is just, you know, curiosity. What kind of depth are we talking about and how do these people harvest?

MR. DAVIES:

The shellfish •• the shellfish aquaculturist would typically use cages or other structures to hold shellfish. There could be on bottom culture, but that remains to be determined. It most likely would be in the deeper, more off•shore regions in Peconic and Gardiner's Bays.

LEG. KENNEDY:

50 feet, 60 feet; what are we talking about?

MR. DAVIES:

Could be that deep.

LEG. KENNEDY:

So, they're not working with jerk rigs?

MR. DAVIES:

No. Certainly the shallower portions of the bays, eel grass bed areas, etcetera would be off limits because they are, again, along the shoreline and are more environmentally sensitive. And in many cases those are the areas where the shellfishermen go today who are harvesting wild resources, like scallops, for example, if, in fact, there was a crop there to take.

LEG. KENNEDY:

Thank you. I appreciate it.

MR. DAVIES:

You're welcome.

LEG. KENNEDY:

Thank you, Mr. Chair.

CHAIRMAN BINDER:

Let me •• so, this is what I've been looking at since I had my round of questions. I'm asking another question here. I'm looking for where we're spending 600 thousand. We're doing a work plan. I mean there's staff work intensive. We're going to locate map aquaculture zones, okay, so another staff work intensive, develop proposed lease program, adopt a program, implement a program. I don't see \$600,000 worth of capital work.

MR. DAVIES:

Okay. When the original capital budget item was prepared over a year•and•a•half ago in 2003, it was only devoted to mapping underwater grant lands. And the estimate at that time was

\$275,000.

CHAIRMAN BINDER:

Who are we paying •• who are we paying 275,000?

MR. DAVIES:

It would have to be done by individuals that would conduct title searches on these old grants and come up with accurate survey boundary determinations. There are •• at that time there was on the order of 50 to 60 underwater grant lands that were privately held.

CHAIRMAN BINDER:

Why is this a capital budget program?

MR. DAVIES:

It's in the capital budget.

CHAIRMAN BINDER:

Why would it be a capital budget program to hire out people to do mapping? And it seems to me something you pay as you go. I mean, this is not •• we're not building anything here. There's no permanence to this. There's no •• we're not •• we're hiring someone to do mapping. That's what this is all about now; so the cost is for mapping. Why are we borrowing money to pay someone to do a job •• the job of mapping? Maybe the Budget Offices is better prepared ••

MR. KNAPPE:

Just to answer one part of your question, we're not borrowing money. The capital budget had this included. And in lieu of doing serial bonds, we are transferring the water quality portion of money into the capital project. One of the reasons why this is included in the capital project is that the Executive and the Legislature back two years ago, as Mr. Davies mentioned, include it in the capital project. In addition to that, it's not a project that will be done in one year's time, I don't believe. And I'll defer that, you know, the specifics to that to the Planning Department. But it is going to be a continuous project of planning and researching. We have done this in the capital budget. Not often but in other cases where •• if we're planning types of activities.

CHAIRMAN BINDER:

Okay. So, the extra mapping is the difference between the 275 and the 600 you need now. But it's all mapping? That's the cost.

MR. DAVIES:

And program developments also depending on what •• excuse me?

CHAIRMAN BINDER:

Who's going to produce the program? That's not going to be announced?

MR. DAVIES:

That would partially be in-house. There would be whatever required environmental review is necessary, whatever additional surveys would have to be undertaken. We've heard people want to conduct certain shellfish surveys, for example, on the bottom before they would agree to •• or endorse where leasing should or should not occur. So, there is some •• some of those actual infield studies that probably have to be conducted as we go on with this.

CHAIRMAN BINDER:

If we don't do this, give me •• just so I know what happens. Who will do the mapping, who will go forward with it? What's going to happen to those waters?

MR. DAVIES:

No one. If the County does not do it •• right now in New York State Law, Suffolk County is the only jurisdiction with authority to lease for shellfish cultivation purposes in this area. State of New York does not have the authority since it's extended it to the County by the recent state law. If the County does not implement this program, it will lose that authority. And then there would be no one currently with that authority. It would probably revert back to the State of New York.

CHAIRMAN BINDER:

Would it? Or would it just be open water that •• that people can •• basically first come, first serve. If you put down your anchor and ••

MR. DAVIES:

If they don't •• if they don't implement and they don't do their own program, that's what it

would be.

MR. KNAPPE:

If I could also, budgetarily, if we do receive revenue from the leases in this program, that revenue would come in and would remain in fund 477 for other water quality related projects as well.

LEG. KENNEDY:

Mr. Chairman?

CHAIRMAN BINDER:

Let me just ask one more question. Do we know that the •• that those who want to use these waters need it mapped; in other words, if they wanted to just go in, in a sense our leases are going to charge them for our mapping. I mean if you really think about it because that's the service we're giving them, mapping. And then they're going to pay us for a certain amount of land that's mapped out. I'm just trying to figure out why we're •• why we're even charging someone to go in and do the farming. I mean if they can go in and, like I say, drop anchor and do what they have to do and do aquaculture on their own •• I'm trying to see why we're charging someone to do something that they can do without us in a sense. Why do we need to control these? Makes us feel good? What do we need to do this?

MR. DAVIES:

Right now you can only conduct aquaculture on temporary assignments in cages. People who have underwater land grants can do other things because they own the property outright. That's one thing.

CHAIRMAN BINDER:

That's what's now. But if we don't do this in the future, they're going to be able to do their own thing. What I'm saying is if we don't do this, then, the answer is they're going to be able to kind of stake their turf, go out there and start doing it without asking us permission or anyone permission. They're just going to start trying to do business. They're going to try, you know, the entrepreneurial spirit. So, why are we charging •• what are we charging for?

MR. DAVIES:

Because right now there's no permanence to their authority •• to their access right. There is no real right to it. The state just allows them to do it on a year to year basis. They could take that away at any time. They can't get loans, for examples, to finance their aquaculture operations because they have no right or real clear access right to use the bottom of this extended over a period of time, five or ten years. They have no real right to do that except on the grants where they own them. And they're limited in number and ••

CHAIRMAN BINDER:

All right. So they need that permanence even to get financing.

MR. DAVIS:

They have permits. But there's additional people that would like to that have •• that security of being able to conduct a business over a longer set period of time so that they can recoup their investment. That's what's really it's all about.

CHAIRMAN BINDER:

Okay. Legislator Kennedy.

LEG. KENNEDY:

A limited number of grants. That means there's private individuals in title. Out of that 100 thousand acres, though, how much of it in private hands, how much of it in municipal hands?

MR. DAVIES:

There is approximately around 3,000 acres in private grants. The rest of it ••

LEG. KENNEDY:

97,000. 97,000 is now State of New York.

MR. DAVIES:

That's correct.

LEG. KENNEDY:

It's a patent that's in the State of New York.

MR. DAVIES:

That's correct.

LEG. KENNEDY:

Okay.

CHAIRMAN BINDER:

Well, we can do one or two things. I think because of the fact that we didn't have backup, it's in our Budget Committee, and it probably more rightly should have been in EPA. So, we can do one of two things. We can actually •• we can either just pass it out because it is here. But I would suggest •• but I would suggest that we actually refer it to the EPA Committee for consideration rather than actually have a vote here because they should look at some these questions that we were looking at. And that's really what they're charged to do. I don't know what the members want to do. Legislator Bishop.

LEG. BISHOP:

Or we can take action so you can be prepared when we come back to it in EPA. Why is this 477 eligible? How does this ••

CHAIRMAN BINDER:

That's a good question. How is it a 477 water quality protection by doing the leasing, I think, is the longer way to ask the question.

MR. DAVIES:

That's exactly right. No, the linkage is shellfish restoration. In this case, if there's aquaculture in the bottom of a private lease and there are large numbers of oyster, clams, scallops, whatever on the bottom growing on a continual basis, that in essence increases the crops throughout the whole system. And that has been shown to be very important to maintaining the proper balance in the water; and hence water quality essentially improves when there are large numbers of shellfish. You're right.

CHAIRMAN BINDER:

Legislator Bishop.

LEG. BISHOP:

When this program was before EPA or its predecessor committee, for years that was never what was discussed about this program. It was about who had the rights to do the fishing.

MR. DAVIES:

That's one of the conflicts that are involved. And as you well know as Chairman of that previous committee ••

LEG. BISHOP:

Yeah.

MR. DAVIES:

•• the debates that occurred there.

LEG. BISHOP:

None of it was about, you know, water quality.

MR. DAVIES:

It was about access.

LEG. BISHOP:

Right.

MR. DAVIES:

And the ability of who would be able to go out and have access on private grounds and, you know •• I'm very familiar with the discussion. It went on for about a year on that.

LEG. BISHOP:

Yeah. But I've lost my familiarity with it. I have to refresh my recollection.

MR. DAVIES:

That was a question of redeeming parcels that the County ••

LEG. BISHOP:

Right. That was it.

MR. DAVIES:

It was a question of parcels going back to the County for non•payment of taxes as a result of all those lawsuits. And the individual bought the right to redeem a certain segment.

LEG. BISHOP:

Right. Thank you.

MR. DAVIES:

It wasn't about the establishment of leasing; however, as a result of all those discussions, this particular item stemmed from the discussions during that year long debate.

LEG. BISHOP:

All right. So, what I would ask Counsel if you could research for me section 425 of the laws of New York. I would appreciate that.

MS. KNAPP:

Apparently in the latest sheets, since it was passed in September ••

CHAIRMAN BINDER:

Okay. So, I'm going to make a motion to actually refer this to •• okay, maybe that's a, yes, protocol so we don't undermine the Presiding officer. We'll just make a motion to table. We'll ask him to move it, reassign it to the other committee; to EPA. I'll make a motion to table, second by Legislator Nowick. All those in favor? Opposed. **Tabled. (Vote: 6•0)**

CHAIRMAN BINDER:

2280 •• I'm sorry, you're probably going to have to go through this again.

2280, amending the 2005 Operating Budget to strike \$118,471,018 in excess 2005 retirement appropriations. I'm going to make a motion on that, second by Legislator Nowick. Is there discussion? Basically, in case you're wondering what this is, it's so that we won't have all kinds of extra appropriations just hanging around waiting for Legislators to put

that in to other projects that they might enjoy to put that in. I could make it •• I could make it •• instead of 18, just make it three zeros at the end there and we can have \$18 for you to do as you please, Legislator Lindsay, but I know you wouldn't want to do that. No. Legislator Lindsay, question.

LEG. LINDSAY:

Both Budget Review and the Exec's Budget Office fine with this?

MR. KNAPPE:

The Budget Review Office and the County Executive's Budget Office worked hand in hand on this resolution. My only point, and I'll defer to Counsel, is that I don't know if this bill •• it could come out of committee today. But I don't know if it can actually be enacted in 2004. It may have to be at the first General Meeting in 2005.

CHAIRMAN BINDER:

Right. My plan is to pass it out of committee here and then, right, table it on the floor of the Legislature until the meeting in January. And members should know we're legally not allowed to pass this until next year.

LEG. KENNEDY:

Mr. Chairman?

CHAIRMAN BINDER:

Legislator Kennedy.

LEG. KENNEDY:

Indulge me in just a freshman or rookie question, if you will. Does this take the total amount of the 2005 adopted budget and reduce it by 118 million?

MR. REINHEIMER:

That is correct.

CHAIRMAN BINDER:

That's good. That wasn't a rookie question. That was good.

LEG. KENNEDY:

What we did three or four weeks ago has now been contracted by that amount?

MR. REINHEIMER:

That's correct. There's a couple retirement appropriations that were not included in the 118 million because of inter-fund transfers and the impact on the sewer districts. But in general, yes, this is related to and is equal to approximately what we did in 2004 to pay our retirement bill. This strikes the appropriations putting the budget back into balance. These appropriations are not supported by any revenue because we've used the revenue in 2004.

LEG. KENNEDY:

Okay. Now you're starting to sound like me, like a lawyer. So, that's why I'm going to try it one more time, then. Does this reduce the '05 adopted by 118 million?

MR. REINHEIMER:

Yes.

LEG. KENNEDY:

Good. Thank you.

CHAIRMAN BINDER:

It doesn't allow anyone to spend money that we don't have. Maybe that's a good way to put it.

LEG. KENNEDY:

Good.

CHAIRMAN BINDER:

We have a motion, a second. All those in favor? Opposed? **2280 is approved. (Vote: 6•0)**

That's it. Motion to adjourn Legislator Losquadro, second by myself. All those in favor? Opposed? We're adjourned.

(THE MEETING CONCLUDED AT 2:02 PM)

DENOTES SPELLED PHONETICALLY